IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10336 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UTTAMCHAND MOHANLAL BHAVSAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10336 of 2001

MR BS BRAHMBHATT for Petitioner No. 1

MR RV DESAI, AGP, for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/10/2002

ORAL JUDGEMENT

Rule. Mr RV Desai, learned AGP waives service of Rule on behalf of the respondents.

2. The petitioner attained the age of superannuation on 1-1-2000. By notification dated 28-1-2000 (Annexure A), the State Government in the Panchayats Department permitted the petitioner to retire on superannuation w.e.f. 31-1-2000. Thereafter, by notification dated 31-1-2000, the State Government in the Panchayats Department cancelled the aforesaid notification dated 28-1-2000 and issued another notification permitting the petitioner to retire w.e.f 31-1-2000 subject to continuance of the departmental inquiry against the petitioner under Rule 189-A of the Bombay Civil Services Rules.

3. The petitioner filed the present petition on 29-10-2001 challenging the aforesaid notification dated 31-1-2000 of the State Government in the Panchayat Department and the consequential order dated 31-1-2000 of the District Development Officer, Panchmahals, Godhra and also prayed for a direction to the respondents to pay the petitioner all the retiral dues. It was specifically contended in the petition that no departmental inquiry was initiated against the petitioner till the date of retirement and that, therefore, no departmental inquiry could be instituted against the petitioner after the date of retirement without complying with the mandatory provisions of Rule 189-A of the BCSR.

4. In response to the notice issued by this Court, affidavit-in-reply dated 19-12-2001 has been filed by the Under Secretary to the Government of Gujarat in the Panchayats department, stating that the chargesheet in the departmental inquiry has been issued against the petitioner on 27-11-2001. It is further stated that the incident in question took place within a period of four years immediately prior to the date of retirement and, therefore, initiation of departmental inquiry against the petitioner even after retirement is legal and valid. However, there is no specific reply to the contention about issuance of the chargesheet after retirement without obtaining sanction of the Governor under Rule 189-A.

5. In view of the above, this petition is disposed of with a direction that respondent No.1 shall consider the aforesaid objection of the petitioner and if the sanction of the Governor is not obtained under Rule 189-A, the respondents shall not proceed in the inquiry against the petitioner and pay the petitioner all his retiral dues at the earliest and in any case within three months from the date of receipt of writ of this Court or a certified copy of this order, whichever is earlier.

6. The petition is accordingly disposed of in terms of the aforesaid direction. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.S. Shah,J)

zgs/-